half share in 17 bighas 7 biswas and dispossession of the defendants from that share, we make a decree declaring the plaintiffs entitled to a half share in the said land jointly with the first four defendants. In other respects we affirm the decree of the Court below. We direct the parties to bear their own costs in this Court.

Decree modified.

APPELLATE CRIMINAL.

1907
November 14.

Before Mr. Justice Banerji and Mr. Justice Aikman.

EMPEROR *v.* QADIR BAKHSH AND OTHERS. *

Act No. XLV of 1860 *(Indian Penal Code), sections* 28, 231—*Counterfeiting coin—Definition—Intention.*

In order to constitute the offence defined by section 231 of the Indian Penal Code, it is not necessary that the counterfeit coin should be made with the primary intention of its being passed as genuine: it is sufficient if the resemblance to genuine coin is so close that it is capable of being passed as such.

IN April 1907 certain Nepalese came to the shop of one Qadir Bakhsh in Benares, and at their request Qadir Bakhsh agreed to make for them in German silver a number of imitations of a current Nepalese coin, a sample of which was given to him. The coins were seemingly not intended originally to be passed as genuine coins, for it was stipulated that they should be made with hooks attached to them; but in fact this was not done, and the coins were handed over plain. The coins when made were a very passable imitation of the original, and, as the High Court found, might well be used for purposes of deception. On these facts Qadir Bakhsh and two of his workmen were committed for trial under section 231 of the Indian Penal Code, but were acquitted upon the ground that the coins were made for use as ornaments only and there was no intention to pass them off as genuine coins. Against this order of acquittal the present appeal was preferred by the Local Government.

The Government Advocate (Mr. *A. E. Ryves*) for the Crown: Mr. *G. W. Dillon*, for Qadir Bakhsh.

BANERJI and AIKMAN, JJ.—This is an appeal by the Local Government from an original order of acquittal passed by the

* Criminal Appeal No. 656 of 1907, against an order of Baij Nath, Sessions Judge of Benares, dated the 3rd of July 1907.

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officiating Sessions Judge of Benares. The three accused were committed to his Court charged with the offence of counterfeiting coin, punishable under section 231, Indian Penal Code. It is proved and admitted that under the direction of Qadir Bakhsh the first accused, the other two accused, who are workmen in his employment, manufactured, out of German silver, coins which we have satisfied ourselves by inspection closely resemble genuine coins current in the Nepal State. The learned Officiating Sessions Judge was of opinion that as it was not the intention of the accused that deception should be practised, nor had they knowledge that deception was likely to be practised, no offence was committed. He refers to the explanation appended to section 231, Indian Penal Code, which, we may remark, has no application to the case. He overlooked the provisions of section 28 of the Code in which the word counterfeit is defined and in particular the second Explanation appended to that section. That Explanation is as follows:—"When a person causes one thing to resemble another, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised." As we have said above, the coins manufactured by the accused are very good imitations of a genuine coin, and we have no hesitation in holding that persons might be deceived by the resemblance. That being so, the presumption referred to in the Explanation arises, and it is for the accused to prove that their intention was innocent or that they did not know that it was likely that deception would be practised. The learned counsel who has appeared on behalf of the accused contends that the accused have discharged the onus which lies on them. In support of his contention he has referred to the low charge made by the accused for manufacturing the coins; to the fact that the accused manufactured a larger number of coins which are not current than of coins which are current in Nepal; to the frank admission made by the accused, and to the absence of concealment. These are undoubtedly circumstances to be taken into consideration, but we are of opinion that they are insufficient to

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discharge the burden which the law imposes on the accused. As the learned Government Advocate has urged in his argument, it is a dangerous thing to manufacture imitations of current coins, and this is no doubt the reason for the stringency of the law as contained in Explanation 2 of section 28 of the Indian Penal Code. We are therefore of opinion that the appeal must be allowed. The learned Government Advocate, however, does not press for a heavy sentence and explains that the object of the appeal is to obtain a pronouncement by this Court as to whether the law laid down by the Court below was correct. Having regard to this and to the circumstances of the case we impose a light sentence. We allow the appeal, set aside the order of acquittal, and convicting Qadir Bakhsh, Algu and Karim Bakhsh under section 231, Indian Penal Code, direct that the District Magistrate do send for the three accused and detain them in his Court until the rising of the Court. We further order that, the accused Qadir Bakhsh do pay a fine of Rs. 10 or in default undergo one month's rigorous imprisonment.

APPELLATE CIVIL.

1907
November 20

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

AMBIKA PARTAP SINGH (DEFENDANT) *v.* DWARKA PRASAD AND OTHERS (PLAINTIFFS) AND DALEL KUNWAR AND OTHERS (DEFENDANTS).*

Hindu law—Hindu widow—Mortgage of husband's estate adversely to adoptive son—Suit to enforce mortgage against adoptive son—Act No. IV of 1882 *(Transfer of Property Act), section* 52*—Lis pendens—Contentious suit—Application for leave to sue in formâ pauperis—Civil Procedure Code, section* 410.

A mortgage of part of her late husband's estate was executed by a Hindu widow in defiance of the rights of her husband's adopted son, and in fact in collusion with the mortgagee and in order to deprive the adopted son of his adoptive father's estate. Shortly before this mortgage was executed by the widow the adopted son had applied for leave to sue *in formâ pauperis* for the recovery of his adoptive father's estate. *Held*, on suit by the mortgagees to enforce their mortgage against the adopted son, then in possession, that the suit must fail, both because the fact of the estate having to some slight extent benefited by the money borrowed was not sufficient under the

* First Appeal No. 160 of 1905 from a decree of Aziz-ur-Rahman, Subordinate Judge of Mainpuri, dated the 23rd of March 1905.